

Not the Meaningful Vote: a Guide to the Role of the Commons on Tuesday

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On 15 January, the Commons rejected the Government's Brexit deal. On Tuesday 29 January, the Commons will consider the Government's response to this rejection. This will be in many respects an unusual constitutional event. Tuesday's debate is not a re-run of the meaningful vote. It is a distinct constitutional exercise designed with a specific purpose in mind: to test whether the Commons supports the Government's response and to give MPs the chance to vote for alternative responses. There are elements of Tuesday's debate that, for some, could represent a dangerous constitutional precedent. However, I would argue that any potential departure from orthodoxy should be seen in the context of the constitutional debate that got us to this point. Many of the elements of Tuesday's debate, the amendments tabled, the Speaker's decisions, the Government's approach and the outcome, will be influenced by the constitutional fundamentals that have driven the debate on the role of the Commons in the Brexit process.

What is the Commons debating on Tuesday?

The Commons is debating a statement made by the Prime Minister on 21 January, triggered by the Commons' decision to not approve the deal. Under the terms of [section 13 of the EU \(Withdrawal\) Act 2018](#), this statement must be put before the Commons through a 'motion in neutral terms' (section 13 (6)(a)). The object of this simple two-step dual process is clear: it requires the Government to set out a response and then ensures that the Commons can scrutinise that response. There are two elements of this mechanism, which are in my view, significant for evaluating its constitutional purpose.

The legal effect of the Commons' decision on Tuesday

The first element of the mechanism is that the Commons' decision in relation to the Government's statement has no legal effect. Whereas the meaningful vote granted the Commons a statutory right to veto the deal, the outcome of Tuesday's debate will have no direct legal consequences. The absence of legal effect was a deliberate decision taken by the Government, and by Parliament, in crafting and enacting section 13. It is significant because it has fundamentally changed the nature of the exercise, and in particular what MPs are seeking to achieve through the amendments proposed for Tuesday.

The origins of Tuesday's debate lie in a proposal that emerged from Viscount Hailsham in the House of Lords when the EU (Withdrawal) Bill was making its way

through Parliament. [Viscount Hailsham's amendment](#) proposed that the Commons should be able to issue *legally binding* negotiating directions upon the Government in the event that the deal was rejected, or if certain dates were reached without an agreement. Such directions would not have guaranteed anything in terms of the outcome of the negotiations of course, but after they were issued the Government would have been under a legal obligation to adopt the direction in its approach to the negotiations. This proposal, which was approved by the Lords, was attacked as constitutional heresy by the Government and others. Enabling the Commons to legally constrain the Government's prerogative power to conduct international negotiations was seen as a step too far.

MPs made an alternative proposal, which did not contain a power to issue negotiating directions, but would provide a statutory guarantee that the Commons should have an opportunity, if the deal was rejected, to scrutinise the response and put alternatives forward through an amendable motion. This compromise was eventually enacted.

Amending an unamendable motion

The second element is section 13's requirement for a 'motion in neutral terms', which was designed to activate Standing Order 24 B, which states that if the Speaker considers a motion to be 'expressed in neutral terms', then no amendment may be tabled. It seemed that the Government included the words in their compromise amendment to mitigate the risk that MPs could use section 13 to take over the Brexit process through amendments. This was at odds with what some MPs had sought to achieve by making the case for a post-rejection role for the Commons through an amendable motion. However, in the end, MPs accepted the Government's approach once the Government conceded that ultimately it would be up to the Speaker to decide whether a motion could be amended. This position was proved correct when on 4 December, the Commons decided to amend the Business of the House Motion to disapply Standing Order 24B for all section 13 motions, and therefore ensuring that MPs could amend the motion on Tuesday.

The Government's statement

On 21 January, the Prime Minister made the statement which forms the basis of Tuesday's debate. The Prime Minister confirmed that the Government would seek to make a second attempt to pass the deal through the Commons, although the statement did not say when that attempt would be made. The Prime Minister also stated that Government had no plans to take no deal 'off the table' other than through making a further attempt at approving the deal.

The Prime Minister set out three specific responses to the Commons' defeat:

- Firstly, that Government would listen to the concerns relating to the Backstop (the Protocol on Ireland and Northern Ireland) and seek to take these to the EU;

- Secondly, that in relation to the negotiations on the future relationship, the Government would enable a greater degree of parliamentary involvement than was offered in relation to the Withdrawal Agreement;
- Thirdly, that the Government would be looking at ways of guaranteeing that the UK's environmental and employment standards keep pace, or go beyond those provided by EU law.

The amendments

Most of the amendments tabled fall within one of two types. There are a number of amendments which seek to force the Government to demand certain things from the EU. There are a number of amendments designed that make specific demands for how the deal should be changed, for example amendment (n) tabled by Dr Andrew Murrison, which would require the Protocol on Ireland to be removed and replaced with alternative arrangements. Rachel Reeves' amendment (j) would require the Government to seek an extension to Article 50 from the EU if the deal has not been approved by the Commons by 26 February.

The other type of amendment seeks to specify the role that the Commons should play in the Brexit process between now and exit day. Within this category there are two amendments that can stand out. The amendments tabled by Yvette Cooper and Dominic Grieve ((b) and (g) respectively) both seek to carve out time on the floor of the Commons by disapplying certain standing orders (most notably standing order 14 (1) which provides that government business shall have precedence at every sitting save as provided in that order). Cooper's amendment allocates one day, 5 February, when the Commons would debate the [EU \(Withdrawal\) \(No 3\) Bill](#), which would oblige the Government to ask the Commons whether or not to seek an extension if the Government does not succeed in getting the deal through the Commons by 26 February. The Grieve amendment would secure six days of the Commons' timetable. These days would be used to debate a motion on Brexit, which could be amended by MPs to enable votes to take place on a range of possible alternatives to the Government's deal.

The distinguishing feature of the Cooper and Grieve amendments is that they are framed in such a way that they would be effective if approved. Unlike the content of the Brexit deal, it would appear that the Commons' timetable is something that a majority of MPs can control through Tuesday's debate.

The procedure and the role of the Speaker

The Government's proposed Business of the House Motion, which provides the basic rules of the conduct of the debate, provides little in the way of guidance as to how the process will work. Tuesday's debate is fundamentally challenging because the Commons is not considering an approval motion. In practice, it seems that the debate will be dominated by the amendments tabled, which represent a complex array of overlapping and potentially inter-locking proposals for what to do next. This will make the Speaker's decisions on selection difficult. The

Speaker may have to decide whether it is possible for more than one amendment to be made to the Government's motion. Some of the amendments appear to be complementary. However, it could be equally be difficult to find a logical way of grouping or sequencing the amendments. As the vote on 15 January showed, it may fall on MPs to find a way of streamlining the process themselves by withdrawing or not moving amendments at the last minute.

Conclusion

Tuesday's debate should be seen in context of the long-running struggle for control between the Government and the Commons. Over the course of the 2017 Parliament, the House of Commons has decided on a number of occasions to increase its control over the executive. Sometimes these developments are portrayed as the product of the actions of individual MPs or the Speaker, but ultimately all of these changes, including the law that underpins Tuesday's debate, were shaped by decision of the House of Commons. If on Tuesday the Commons takes further steps to constrain the executive, this will again show that a majority of MPs believe that our constitutional arrangements need to be adapted to deal with a situation of a minority Government and the ticking clock of Article 50. It is hard to claim that it would be anything other than constitutional orthodoxy for the Commons' rules to be adapted to deal with a particular set of political circumstances.

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